

13 January 2020

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The Manager
Retirement Income Policy Division
Treasury
Langton Cres
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By email: superannuation@treasury.gov.au

Dear Sir/Madam,

We welcome the opportunity to provide feedback in relation to Treasury's request for feedback on the proposed establishment of a Consumer Advocacy Body for Superannuation.

Maurice Blackburn Pty Ltd is a plaintiff law firm with 32 permanent offices and 31 visiting offices throughout all mainland States and Territories. The firm specialises in personal injuries, medical negligence, employment and industrial law, dust diseases, superannuation (particularly total and permanent disability claims), negligent financial and other advice, and consumer and commercial class actions. The firm also has a substantial social justice practice.

We state from the outset that we, in lodging this submission, are NOT lodging an expression of interest in seeking to become an official/appointed Consumer Advocacy Body for Superannuation. Instead, we seek merely to offer input into Treasury's contemplation of how best to make consumer advocacy for Australian superannuation fund members powerful and accessible.

Maurice Blackburn recognises that this current inquiry seeks to implement a commitment made by the Federal Government as part of its 2019-20 budget announcements, specifically its intention to establish a consumer advocacy body for superannuation.

This in turn was drawn from the outcomes of the Productivity Commission (PC) inquiry into Superannuation. The final report from that inquiry tells us¹:

Member advocacy on superannuation is lacking. The availability of resources on the industry side has meant that much of the discourse on superannuation has been dominated by the interests of funds and their service providers rather than the interests of members. There is a lack of a single, well-resourced body to effectively

¹ <https://www.pc.gov.au/inquiries/completed/superannuation/assessment/report/superannuation-assessment.pdf>; p.618

advocate the views and perspectives of superannuation members in policy and regulatory deliberations — along the lines of what already exists in telecommunications and energy.

A new organisation to understand, promote and give voice to member interests is urgently needed, and the Government should provide ongoing funding for it. This organisation should provide assistance to members (including truly independent information and guidance), undertake and fund research and data analysis, and work with regulators and other bodies to advocate on behalf of members. The Superannuation Consumers Centre — established in 2013 and first funded in 2018 — is a possible contender to do this.

This resulted in the PC making the following formal recommendation:

Recommendation 28: An Independent Member Advocacy Body

The Australian Government should, as a priority, provide adequate ongoing funding to support an independent superannuation members' advocacy and assistance body.

Maurice Blackburn is pleased to present the following input in response to the four topics nominated on the Treasury website for this inquiry², namely:

- 1. *Functions and outcomes: What core functions and outcomes do you consider could be delivered by the advocacy body? What additional functions and outcomes could also be considered? What functions would the advocacy body provide that are not currently available?***

Maurice Blackburn notes the conclusion drawn by the PC that member advocacy on superannuation is lacking³. While we broadly agree with this statement, we believe it is more accurate to say that member advocacy on superannuation is *uncoordinated*.

The PC report goes on to indicate that they believe that an advocacy and assistance body for consumers should provide the following functions:

- Provide assistance to members (including truly independent information and guidance),
- Undertake and fund research and data analysis, and
- Work with regulators and other bodies to advocate on behalf of members.

We agree that these are worthwhile functions for an advocacy body.

Maurice Blackburn acknowledges the expertise and attentiveness of Super Consumers Australia and supports it having a key, formalised role in the advancement of member interests such as those recommended by Commissioner Hayne.

We would emphasise, however, that many organisations are already providing intensive advocacy on behalf of superannuation consumers, and have been doing for quite some time and in some cases, decades. These include:

² <https://treasury.gov.au/consultation/c2019-38640>

³ <https://www.pc.gov.au/inquiries/completed/superannuation/assessment/report/superannuation-assessment.pdf>; p.618

- Lawyers representing superannuation consumers in claims for compensable losses caused by legal breaches of superannuation fund administrators or their insurers,
- Consumer rights organisations, peak bodies and individual law firms advocating and lobbying for pro-consumer policy reform,
- Those offering financial counselling services for superannuation consumers,
- Those advocating for the human rights of superannuation consumers.

In order to provide this advocacy, consumer support agencies need the following skills, expertise and capacities:

- The capacity to constructively interface with relevant industry stakeholders with and on behalf of consumers, including:
 - Superannuation fund trustees and administrators,
 - Insurers, reinsurers and superannuation funds,
 - Third party service providers retained by trustees and insurers such as health care providers and private investigators,
 - Regulators,
 - Treasury and Government,
 - Dispute resolution bodies such as AFCA,
 - Code of Practice administrators such as the Life insurance Code Compliance Committee (Life CCC),
 - A Diverse range of cross sections of the public, with bespoke demographic needs and issues, such as the elderly and indigenous Australians,
- Direct knowledge and experience of how the systems that work against the interests of consumers operate including the legal framework, case law, administrative/claim processes, taxation laws and relevant codes of practice,
- Direct knowledge and experience in dealing with the processes of the abovementioned industry stakeholders including the tactics of for-profit trustees and insurers, to the disadvantage of consumers, as highlighted by the Financial Service Royal Commission,
- The capacity to identify and present practical case studies that instantiate systemic concerns and the personal experiences of disaffected consumers so as to ensure public policy is not developed in the abstract,
- A history of advocacy and engagement in public policy discourse,
- Sufficient clout and independence to be able to stand up for consumers against - at times - government, the financial services industry, and others with the capacity to disempower consumers.

Maurice Blackburn submits that Treasury should consider a panel model, to include those who are already actively providing advocacy and other services discussed above. This may include representation from the following related, consumer support industries (in addition to Super Consumers Australia):

- Financial counsellors or an appropriate peak body such as Financial Counselling Australia,
- Professional legal advocates or an appropriate peak body such as the Australian Lawyers Alliance,
- Not for profit consumer legal service providers such as Super Consumers Australia, Financial Rights legal Centre and Consumer Action Legal Centre,
- Legal Aid,
- Disability rights peak bodies.

A panel model would offer the following benefits, over the creation and funding of a single organisation:

- It would bring in a wide cross-section of voices, covering the range of consumer protections needed,
- It would come with pre-existing advocacy expertise and relationships,
- It would mitigate against any potential, real or perceived conflicts associated with its funding base,
- It may be cheaper, as most members would see participation on the panel as part of their existing remit.

In the event that, as floated by the PC, Super Consumers Australia is appointed as *the* organisation representing member interests, it is submitted that that appointment should be subject to its engagement in regular consultation with a committee constituted by a cross section of the stakeholders, formalised by a Charter establishing the committee's mandate and powers. This is needed to address instances of policy disagreement between consumer groups which is inevitable given:

- the complexity of the superannuation system; and
- the range of constituencies (represented by different consumer stakeholders) which make up the enormous body of super members, who may be impacted differently by a given reform proposal depending on their age, gender, personal wealth/health etc.

Maurice Blackburn expects that the much of the advocacy required by consumers will relate to insurances within superannuation, as this was a central area of dispute examined by the Financial Services Royal Commission.

Maurice Blackburn also expects that where consumer advocacy is required in relation to superannuation providers, the majority of input will need to be targeted toward for-profit (retail) funds. It is difficult to identify any objective resource which shows retail funds as superior in relation to consumer advocacy or protection to industry funds, on any measure.

It is disappointing that a compulsory, ASIC approved code or practice, together with a consumer advisory body has not been established by industry as yet, due in large part to the intransigence of the life insurers and their often vertically integrated retail super funds. Instead Treasury and the Government have had to take the initiative to implement something that should have been established years prior. Nevertheless, this is a crucial opportunity to give consumers a formal, coordinated voice and Maurice Blackburn looks forward to contributing to the success of this project however possible.

2. Ongoing costs: What would be the indicative ongoing costs of delivering these functions? What would be the indicative costs of delivering any additional functions?

The costs will depend on the final agreed structure of the advocacy body.

A stand-alone advocacy body would be quite expensive as an option. If tasked as per the PC's recommendation, it would likely need:

- A CEO or leader
- Staff to coordinate and conduct direct interaction with consumers
- A research capacity
- An advocacy capacity
- Administrative support

Of course, it would also need office space and the usual technologies.

A panel model may be significantly cheaper. By drawing on existing structures and networks, it would dispense with the need for dedicated advocacy and research capacities. If tied in with other, existing consumer advocacy functions, the need for office space may be negated as well.

3. *Establishment:* What would be the likely set-up costs for the advocacy body and approximately how long would it take to establish such a body?

Once again, this would depend on the model selected. A Panel Model could be implemented more quickly than a stand-alone advocacy body.

4. *Governance and accountability:* What governance and accountability models (including assessment of impact and performance) do you consider to be most appropriate for the advocacy body?

Regardless of its form, any consumer advocacy function would need to have clear foundations:

- A Charter, containing:
 - A clear remit,
 - A clear accountability framework,
 - A description of how the advocacy service becomes and remains consumer-centred.

- A Governance Framework, containing:
 - Measures and checks to ensure impartiality from the body's funders,
 - A consumer-centred process for determining governance,
 - A clear statement on how the body interacts with stakeholders including the resolution of divergent opinions within relevant stakeholder groups.

We trust that the suggestions above will be helpful in informing Treasury's deliberations.

Please do not hesitate to contact me and my colleagues on 07 3014 5051 or at JMennen@mauriceblackburn.com.au if we can further assist with Treasury's important work.

Yours faithfully,



Josh Mennen
Principal Lawyer
Maurice Blackburn